

ATTACHMENT 2

TO: Vince Morici, Administrative Analyst
FROM: Ellen Carroll, Environmental Coordinator
VIA: Kami Griffin, Assistant Director, Department of Planning and Building
DATE: July 1, 2009
SUBJECT: Response to Grand Jury Report on The Planning Process - Improving Review and Hearing Procedures

RECOMMENDATION

It is recommended that this report serve as the Department of Planning and Building's response to the Grand Jury Report on *The Planning Process - Improving Review and Hearing Procedures*.

DISCUSSION

On June 3, 2009, the Grand Jury issued a report on The Planning Process Improving Review and Hearing Procedures. This response addresses the findings and the recommendations pertaining to the Planning and Building Department.

The Department's complete response is included in the attached report. Responses are shown in italics following the specific applicable portions of the Grand Jury Report.

OTHER AGENCY INVOLVEMENT/IMPACT

Not Applicable

FINANCIAL CONSIDERATIONS

Costs for preparing this response are included in the current department budget.

RESULTS

This response will meet the legal requirements for responding to a Grand Jury report with findings and recommendations.

**Response by the Department of Planning and Building to the
Grand Jury Report of June 2009 on
*The Planning Process - Improving Review and Hearing Procedures***

The San Luis Obispo County Department of Planning and Building has the following comments to offer in respect to the **Grand Jury's Findings 1-8, and Recommendations 1-4** contained within the report titled: **The Planning Process - Improving Review and Hearing Procedures.**

GRAND JURY FINDINGS

1. San Luis Obispo County is the only California County with an Environmental Division that is separately staffed for and dedicated solely to the review and analysis of environmental planning issues.

Response: The Planning and Building Department wholly disagrees with the finding as follows:

After contacting a number of California counties, staff has determined that at least nine counties in the state, in addition to San Luis Obispo County, have separate sections or divisions (like San Luis Obispo County) which have specially trained staff in order to review and analyze environmental planning issues. The nine counties that were identified include San Francisco, San Bernardino, Sacramento, Los Angeles, Napa, Kern, Sonoma, Santa Clara, and Santa Cruz Counties.

In addition, staff in the Environmental Division of the San Luis Obispo County Planning Department have had special training in order to develop their skills, knowledge and experience with regard to environmental issues and the requirements of the California Environmental Quality Act (CEQA). However, staff in the Environmental Division are not dedicated solely to the review and analysis of environmental planning issues. Staff in the Environmental Division are cross-trained in order to process entire project applications to completion.

2. Both state and county CEQA Guidelines specifically require the Environmental Division consider both the individual and cumulative environmental effects of projects.

Response: The Planning and Building Department agrees with the finding.

3. Within a one year period, the Environmental Division of the Planning Department received three applications for Conditional Use Permits to conduct sand and gravel mining operations in the Salinas River or its tributaries and it concurrently reviewed and studied all of these applications from September 2006 through March 2008.

Response: The Planning and Building Department agrees with the finding.

4. While concurrently reviewing and studying these three applications over a period of approximately eighteen months, the Environmental Division staff never raised or asked the applicants for studies to address the possible cumulative environmental effects of these applications.

Response: The Planning and Building Department wholly disagrees with the finding as follows:

Environmental Division staff have skills, knowledge and experience in environmental issues and CEQA requirements. Cumulative impacts are always considered during the initial study process. For these Conditional Use Permit applications it was determined that cumulative impacts were less than significant as a result of mitigation recommended by the applicant's geologist and the geologist hired by the County to peer review the work done by the applicant's geologist. The conclusion in the proposed negative declarations was that cumulative impacts were mitigated to a level of insignificance.

*It is important to note the negative declarations are not adopted until the Review Authority takes action to do so. Negative declarations reviewed by the Planning Commission as part of these Conditional Use Permit applications were **proposed** negative declarations. Although the CA Department of Fish and Game and the Regional Water Quality Control Board received referrals early in the process, these state agencies also did not identify the potential cumulative impact of sand extraction until just before the first Conditional Use Permit's public hearing date (Fish and Game) and after that hearing was continued (Regional Water Quality Control Board).*

5. Public hearings on the Conditional Use Permit applications for these three applications were scheduled so close to, and even before, the end of the applicable public comment periods that Environmental Division staff reports for continuances were almost a certainty and were, in fact, requested for two of the applications.

Response: The Planning and Building Department partially disagrees with the finding as follows:

None of the public hearings on the Conditional Use Permit applications were scheduled to occur before the end of the two week Request For Review timeframes applicable to each of the projects' proposed negative declarations. The timing of the public hearings did not mean that continuances were a certainty. Staff was prepared to go ahead with the Conditional Use Permit scheduled to be heard first. A letter received the day before the scheduled hearing date led staff to recommend that the Planning Commission continue the item.

In their report, the Grand Jury indicates that staff should have known that recommending approval of these mining applications was likely to generate a larger than usual number of comments and/or Requests For Review. Staff did anticipate a larger than usual number of comments. For comparison, most highly controversial projects receive two to three Requests For Review. It was certainly not anticipated that the Department would receive fourteen Requests For Review on the proposed Viborg Negative Declaration. At the time the project was noticed for hearing, it was anticipated that more than several Requests For Review would be submitted and responding within an approximate one week timeframe was feasible.

6. Continuances of the Planning Commission public hearings for the two applications referenced in Finding 5 resulted in a four to six month delay of a process that had already taken approximately two years before the public hearings were scheduled.

Response: The Planning and Building Department agrees with the finding.

7. The Planning Department and the Planning Commission permit the submission of written comments by applicants and the public at any time before or during the public hearing process up to the point in time that the Planning Commission makes a decision on a project.

Response: The Planning and Building Department agrees with the finding.

8. The Planning Commission Rules of Procedure have no provision concerning public comment on revised findings being considered by the Planning Commission after it has closed a public hearing and reached a tentative decision on a matter and there is no legal requirement that public comments be allowed on such reviewed findings.

Response: The Planning and Building Department partially disagrees with the finding as follows:

The Rules of Procedure do not speak specifically to allowing public comments on revised findings. The Planning Commission is legally required to approve findings. The Chair has the right to ask for public comment on revised findings in order for the commission to make an informed decision, even when additional public comment has the potential to extend the approval process. The Ralph M. Brown Act is the state law that governs meetings conducted by local agencies. The purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. The Planning Commission Chair has the discretion to allow additional public testimony to ensure public participation in the decisions and findings made by the Planning Commission. This should continue to be at the Chair's discretion and should be based on a case by case review at the time of the public hearing.

GRAND JURY RECOMMENDATIONS

1. The Planning Department and its Environmental Division should institute procedures and training to assure that its environmental resource specialists consider the issue of cumulative environmental effects and advise applicants of this issue at the earliest appropriate time when reviewing applications for projects that may have significant environmental impacts.

Response: This recommendation will not be implemented because it is not warranted as follows:

Environmental Division staff has skill, knowledge and experience in environmental issues and CEQA requirements. Cumulative impacts are required to be considered during the initial study process. The Planning and Building Department already has procedures and currently implements training in order to ensure that potential cumulative impacts are identified. The County's Initial Study Checklist requires a review of cumulative impacts for each issue area and requires a determination of whether an impact is cumulatively considerable. The required checklist makes it mandatory for staff to assure the issue of cumulative environmental impacts is reviewed. In addition, the Department's Desk Manual contains a section on how to analyze cumulative impacts. As these processes are already in place, it is not warranted to implement the recommendation of the Grand Jury.

2. The Planning Department and its Environmental Planning Division should institute procedures to assure that public hearings on applications involving possible environmental impacts are scheduled not less than 30 days before the end of any applicable public comment period or period for filing Requests for Review.

Response: This recommendation will not be implemented because it is not warranted as follows:

The Planning Department currently has established procedures that would assure that there is a minimum of 30 days between when the Clearinghouse receives the proposed negative declaration and the date of the public hearing. In addition, the negative declaration is Courtesy Noticed on the Board of Supervisor's agenda a minimum of 14 to 30 days in advance of the public hearing date. This is set forth in the Planning Department Due Date Matrixes and in the Department's Desk Manual. For example, if a project was scheduled to be heard by the Planning Commission on April 24, 2008, the proposed negative declaration would be required to be completed by March 5, 2008. The proposed negative declaration would be sent to the Clearinghouse on March 12, 2008 and Courtesy Noticed on the Board of Supervisor's agenda on March 25, 2008. As these processes are already in place, it is not warranted to implement the recommendation of the Grand Jury.

3. The Planning Commission Rules of Procedure should be revised to establish a deadline for the filing of written comments on application that is not less than three days before the scheduled public hearing and to provide that any written comments filed after the deadline will not be considered by the Planning Commission and will not be part of the record of the public hearing.

Response: This recommendation will not be implemented because it is not warranted as follows:

While it may be possible to put a deadline on voluminous written materials that are submitted to the Planning Commission, CEQA requires the administrative record to include all written materials presented to the Planning Commission, "prior to action on the environmental documents or on the project." Pub. Resources Code 21167.6, subd. (e)(4). In other words, CEQA requires the record to include all written materials that are submitted to the Planning Commission before the hearing and during the hearing up to the point at which the negative declaration for the project is adopted or the environmental impact report is certified and/or the project is approved or denied.

In addition, Section 22.70.060 of the Land Use Ordinance and 23.10.060 of the Coastal Zone Land Use Ordinance state: "At the public hearing, interested persons may present information and testimony relevant to a decision on the proposed project or amendment".

4. The Planning Commission Rules of Procedure should be revised to specifically provide that public comment will not be allowed on revised findings that have been presented to and are being considered by the Planning Commission after the public hearing on the application has been closed and the Planning Commission has made a tentative decision on the project.

Response: This recommendation will not be implemented because it is not warranted as follows:

The Planning Commission Rules of Procedure currently allow the Planning Commission the discretion to allow public comment after the public hearing on the application has been closed and the Planning Commission has made a tentative decision on the project. Allowing the Planning Commission to hear additional public testimony when they deem necessary ensures public participation and helps to ensure informed decisions. This should continue to be at the Planning Commission's discretion and should be based on a case by case review at the time of the public hearing.